

Issued to: Kenneth F. Curtin

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1538

Kenneth F. Curtin

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 3 May 1965, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for six months outright upon finding him guilty of misconduct. The offense alleged in six specifications were proved by evidence that while serving as a Third Assistant Engineer on the United States SS BAY STATE under authority of the license above described, Appellant failed, without permission, to perform his duties on 21 January, 5 February, 6 February, 8 February and 16 February 1965 while the ship was in various foreign ports; he left the engine room while on watch at Pusan, Korea on 26 January 1965; Appellant delayed the sailing of the vessel from Kaohsiung, Taiwan on 6 February 1965; and he failed to join the vessel upon her departure from Naha, Okinawa on 20 March 1965. (Appellant rejoined the vessel on 6 April.)

Since Appellant was not present at the hearing on 27 April 1965, the hearing was conducted in absentia after the Examiner entered pleas of not guilty on behalf of Appellant.

The Investigating Officer introduced in evidence testimony and entries in the Official Logbook which clearly support the allegations in the specifications.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and six specifications had been proved, and entered the above of suspension.

Appellant's prior record consists of having failed to join four different ships.

On appeal, Appellant states that he was not present at the hearing because he was neither physically nor mentally capable of defending himself. Appellant contends that his conduct on the vessel was due to mental sickness and alcohol, but he is now better after receiving medical treatment; Appellant tried to sign off the vessel but the Master refused to let him go; he is guilty of some of the offenses alleged but not all of them. Appellant requests a modification of the order to a suspension for two months and five years' probation.

OPINION

Appellant's excuse for not attending the hearing is not acceptable. He made no objection at the time he was served with the charge and specifications six days prior to the hearing or at any subsequent time before the date of the hearing. On the contrary, he acknowledged service of the charge and specification sheet, which included the summons to appear on 27 April for the hearing, by signing the yellow copy of the sheet. Therefore, it was proper to have conducted the hearing in absentia.

Appellant's other contentions are without merit. There is convincing evidence that he was guilty of all of the offense alleged and he waived the opportunity to refute this by failing to appear at the hearing.

The lack of responsibility shown by these offenses is particularly serious since Appellant was serving as a licensed officer. Undoubtedly, the order of six months' suspension is not excessive and it will not be modified.

ORDER

The order of the Examiner dated at San Francisco, California, on 3 May 1965, is AFFIRMED.

E.J. Roland
Admiral U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 30th day of December 1965.

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